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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 GISELLE ANTONIO,

11 Plaintiff,

12 vs.

13 DaVITA, INC. and TOTAL RENAL CARE,
14 INC.,

Defendant.

No. C04897L

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT

15 COMES NOW the defendants DaVita Inc. and Total Renal Care, Inc. and in answer
16 to plaintiff's Complaint on file herein, admit, deny and allege as follows:

17 I. ANSWER

18 Part I

19
20 1. As to the allegations in ¶ 1, Defendants admit that plaintiff was employed by
21 Total Renal Care, Inc., a subsidiary of DaVita Inc. The remaining allegations are denied for
22 lack of knowledge.

23 2. As to the allegations in ¶ 2, Defendants admit same.
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DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT - 1

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2 Part II

3 3. As to the allegations in ¶ 3, the same call for a legal conclusion for the court.

4 4. As to the allegations in ¶ 4, the allegations call for a legal conclusion.

5 Because of the complete diversity of the parties, Defendants have filed a Notice of Removal.
6

7 Part III

8 5. As to the allegations in ¶ 5, Defendants restate and incorporate by reference
9 their responses to the subject paragraphs.

10 6. Defendants deny the allegations in ¶ 6 for lack of knowledge and lack of
11 notice.

12 7. Defendants deny the allegations in ¶ 7.

13 8. Defendants deny the allegations in ¶ 8.

14 9. Defendants deny the allegations in ¶ 9.

15 10. Defendants deny the allegations in ¶ 10.

16 Defendants deny the plaintiff is entitled to the damages in ¶¶ 1-4 of section entitled
17 "Relief Requested on Count I."
18

19 Part IV

20 11. As to the allegations in ¶ 11, Defendants restate and incorporate by reference
21 their responses to the subject paragraphs.

22 12. Defendants admit the allegations in ¶ 12.

23 13. Defendants deny the allegations in ¶ 13 as stated. Terms and conditions of
24 employment and benefits are as stated in DaVita policy.
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DEFENDANTS' ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S COMPLAINT - 2

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1 14. As to the allegations in ¶ 14, Defendants admit that plaintiff missed work on
2 Saturday, September 6, 2003. Defendants admit that plaintiff's employment was terminated
3 on September 8, 2003. Defendants deny that plaintiff's employment was terminated because
4 she missed work due to illness. Due to lack of knowledge, Defendants deny that plaintiff
5 became ill on Friday, September 5, 2003. Defendants deny the balance of the allegations in
6 ¶ 14 as stated.
7

8 15. Defendants deny the allegations in ¶ 15 due to lack of knowledge.

9 16. Defendants deny the allegations in ¶ 16.

10 17. Defendants deny the allegations in ¶ 17.

11 Defendants deny the plaintiff is entitled to the damages in ¶¶ 1-4 of section entitled
12 "Relief Requested on Count II."
13

14 Part V

15 18. As to the allegations in ¶ 18, Defendants restate and incorporate by reference
16 their responses to the subject paragraphs.
17

18 19. As to the allegations in ¶ 19, Defendants deny as stated.

19 20. Defendants deny the allegations in ¶ 20.

20 21. Defendants deny the allegation in ¶ 21 as stated.

21 22. Defendants deny the allegations in ¶ 22.

22 23. Defendants deny the allegations in ¶ 23.

23 Defendants deny the plaintiff is entitled to the damages in ¶¶ 1-4 of section entitled
24 "Relief Requested on Count III."
25

II. AFFIRMATIVE DEFENSES

Having fully answered the allegations of plaintiff's Complaint, Defendants assert the following defenses and affirmative defenses:

1. Plaintiff's Complaint fails to state a claim for which relief can be granted.
2. Plaintiff's claims are barred, in whole or in part, by the principles of comparative fault.
3. Plaintiff failed to adequately and timely inform Defendants regarding the nature of her claimed disability.
4. Disability discrimination case law states that an employer is under no obligation to provide a different supervisor more to plaintiff's liking as a method of accommodation.
5. Plaintiff had been disciplined based on actions wholly unrelated to any disability and warned that any further infraction would result in dismissal.
6. Plaintiff was fired by Defendants for a legitimate and non-discriminatory reason in response to her behavior in the workplace.
7. The statements in employee manuals, handbooks, or other documents do not amount to promises of specific treatment in specific situations.
8. Plaintiff did not justifiably rely upon any such statements in employee manuals, handbooks, or other documents.
9. Promises, if any, in employee manuals, handbooks, or other documents were not breached.

10. Plaintiff cannot recover damages for emotional distress on breach of promise claims.

11. Plaintiff did not have a sensory, mental, or physical abnormality that had a substantially limiting effect on her ability to do her job.

12. Plaintiff did not give notice to Defendants of any sensory, mental, or physical abnormality or its substantially limiting effect, if any, on her ability to do her job.

13. Defendants made reasonable inquiries into Plaintiff's absence, which Plaintiff refused to answer.

14. Plaintiff's claimed damages were proximately caused by or contributed to by the acts or omissions of third parties over whom Defendants had no right of control, so as to bar or reduce plaintiff's recovery herein.

15. In the event a judgment or award is made in favor of the plaintiff, or there is a compromise of this doubtful and disputed claim, Defendants are entitled to an offset for any advance payment of funds made by it toward plaintiff's medical expenses or other related damages.

16. The relief Plaintiff seeks is duplicative.

Defendants reserve the right to assert additional affirmative defenses as may be warranted by further investigation of plaintiff's claims and as information is obtained through the discovery process.

III. PRAYER FOR RELIEF

WHEREFORE, defendants Total Renal Care, Inc. and DaVita Inc. prays for relief as follows:

- 1 1. That the Court enter an order dismissing plaintiff's Complaint with prejudice;
2 2. That the Court award Defendants their costs and disbursements in defense of
3 this action, including an award of attorney's fees, as allowed by law;
4 3. That the Court award such other and further relief in favor of Defendants and
5 against plaintiff Giselle Antonio as it deems just and equitable.
6

7 DATED this 13th day of May, 2004.

8 LEE SMART COOK MARTIN &
9 PATTERSON, P.S., INC.

10 By: /s/ Patricia K. Buchanan
11 Patricia K. Buchanan, WSBA No. 19892
12 Pamela J. DeVet, WSBA No. 32882
13 Of Attorneys for Defendants DaVita Inc.
14 And Total Renal Care, Inc.
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DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, I mailed or caused delivery of a true and accurate copy of this document to:

Laura B. Allen
Mead & Allen LLC
4509 Interlake Avenue North, Suite 205
Seattle, WA 98103

DATED this 13th day of May, 2004, at Seattle, Washington.

/s/ Susan H. Madsen
Susan H. Madsen